

AMERICAN TELEPHONE AND TELEGRAPH CO.
(ON RECONSIDERATION)

IBLA 81-215, 81-217

81-221, 81-259

Decided November 5, 1981

Reconsideration sua sponte of 57 IBLA 215 which set aside and referred to the Hearings Division decisions of the Nevada and Wyoming State Offices, Bureau of Land Management, imposing reappraised annual rental charges for communication site rights-of-way.

Decision modified in part; cases remanded to the Bureau of Land Management State Offices.

1. Administrative Procedure: Hearings -- Communication Sites --
Hearings -- Rights-of-Way: Act of March 4, 1911 -- Rules of Practice:
Hearings

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L. Inc., 36 IBLA 260 (1978).

APPEARANCES: Richard A. Bromley, Esq., San Francisco, California, for the appellant; James E. Turner, Esq., Office of the Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Board is reconsidering sua sponte its decision in American Telephone and Telegraph Co., 57 IBLA 215 (1981) (AT&T). 1/ In that

1/ The rights-of-ways involved in that decision are:

IBLA 81-215

N-023456 (Search Light)

N-053773 (Mormon Mesa)

decision we held that the Bureau of Land Management (BLM) was required to afford a pre-FLPMA right-of-way grantee the opportunity for a hearing, pursuant to 43 CFR 2802.1-7(e) (1979), prior to the imposition of reappraised annual rental. We then referred the cases to the Hearings Division for assignment of an Administrative Law Judge to conduct a hearing or hearings, as necessary.

Our reconsideration of the AT&T decision involves only the limited question of the forum for the hearing. We expressly affirm our holding that the opportunity for a hearing is required by 43 CFR 2802.1-7(e) (1979).

[1] We did not intend in our decision to establish a standard procedure whereby a hearing before an Administrative Law Judge was required in each case involving reappraisal of the rental fee for a pre-FLPMA right-of-way. At the time we were not unmindful of the fact that more informal procedures at the State Office level had also been endorsed by the Board in Circle L., Inc., 36 IBLA 260 (1978). However, we now believe that given the substantial number of similar cases arising, the more effective and efficient procedure would be to allow BLM to provide the "opportunity for a hearing" consistent with the basic procedural parameters set forth in Circle L., Inc., *supra*. Therefore, in the interest of treating all persons similarly situated in a fair and equitable manner, we modify those parts of our AT&T decision referring those cases to the Hearing Division for a hearing and remand those cases to BLM in order that BLM may afford those parties the "opportunity for a hearing."

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

fn. 1 (continued)

	N-053746 (Arrow Canyon)
	N-057098 (Wildhorse)
IBLA 81-217	W-21799 (Fontenelle)
IBLA 81-221	N-057071 (Stillwater)
IBLA 81-259	N-057424 (Wendover)

